

HOUSE BILL No. 1262

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-55-10.

Synopsis: Bankruptcy and exemption amounts. Increases exemption amounts for property subject to attachment or execution under a bankruptcy proceeding or based on a judgment against the property owner. Requires the department of financial institutions to adjust exemption amounts every six years beginning in 2010. Repeals obsolete provisions. (The introduced version of this bill was prepared by the commission on courts.)

Effective: July 1, 2005.

Kuzman, Thomas

January 6, 2005, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1262

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-6-2-33.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 33.5. "Debt", for purposes of sections 44.3, 44.4, 71.9,**
4 **73.5, 73.7, and 135.5 of this chapter and IC 34-55-10, means a**
5 **legally or an equitably enforced monetary obligation or liability of**
6 **an individual arising out of contract, tort, or otherwise.**
7 SECTION 2. IC 34-6-2-44.3 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2005]: **Sec. 44.3. "Exempt", for purposes of IC 34-55-10, means**
10 **protected from a judicial lien, process, or proceeding to collect a**
11 **debt.**
12 SECTION 3. IC 34-6-2-44.4 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2005]: **Sec. 44.4. "Exemption", for purposes of IC 34-55-10,**
15 **means protection from a judicial lien, process, or proceeding to**
16 **collect a debt.**
17 SECTION 4. IC 34-6-2-71.9 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 71.9. "Judicial lien", for purposes of sections 44.3, 44.4, and 73.7 of this chapter, means a lien on property obtained by a judgment, levy, or another legal or equitable process or proceeding instituted to collect a debt.**

SECTION 5. IC 34-6-2-73.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 73.5. "Levy", for purposes of section 71.9 of this chapter and IC 34-55-10, means the seizure of property under a writ of attachment, a garnishment, an execution, or a similar legal or equitable process issued to collect a debt.**

SECTION 6. IC 34-6-2-73.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 73.7. "Lien", for purposes of section 71.9 of this chapter and IC 34-55-10, means a security interest, judicial lien, statutory lien, common law lien, or another interest in property to secure the payment of a debt or the performance of an obligation.**

SECTION 7. IC 34-6-2-135.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 135.5. "Security interest", for purposes of section 73.7 of this chapter, means an interest in property created by a contract to secure the payment of a debt or the performance of an obligation.**

SECTION 8. IC 34-55-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1. In accordance with Section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Indiana**
~~(+) is not entitled to the federal exemptions as provided by Section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)). and~~

~~(2) may exempt from the property of the estate only that property specified by Indiana law.~~

SECTION 9. IC 34-55-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.**

(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

~~(b) (c) The following property of a judgment debtor domiciled in Indiana is not subject to levy or sale on execution or any other final process from a court, for a judgment founded upon an express or implied contract or a tort claim: exempt:~~

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(1) Real estate or personal property constituting the personal or family residence of the ~~judgment~~ debtor or a dependent of the ~~judgment~~ debtor, or estates or rights in that real estate or personal property, of not more than ~~seven thousand five hundred dollars (\$7,500)~~; **fifteen thousand dollars (\$15,000)**. The exemption under this ~~subsection~~ **subdivision** is individually available to joint ~~judgment~~ debtors concerning property held by them as tenants by the entireties.

(2) Other real estate or tangible personal property of ~~four thousand dollars (\$4,000)~~; **eight thousand dollars (\$8,000)**.

(3) Intangible personal property, including choses in action, **deposit accounts, and cash** (but excluding debts owing and income owing), of ~~one hundred dollars (\$100)~~; **three hundred dollars (\$300)**.

(4) Professionally prescribed health aids for the ~~judgment~~ debtor or a dependent of the ~~judgment~~ debtor.

(5) Any interest that the ~~judgment~~ debtor has in real estate held as a tenant by the entireties. ~~on the date of the filing of the petition for relief under the bankruptcy code; unless a joint petition for relief is filed by the judgment debtor and spouse; or individual petitions of the judgment debtor and spouse are subsequently consolidated.~~ **The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.**

(6) An interest, whether vested or not, that the ~~judgment~~ debtor has in a retirement plan **or fund** to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan **or fund**:

(i) by or on behalf of the debtor and

~~(ii) which were not subject to federal income taxation to the debtor at the time of the contribution; or~~

(ii) if the retirement plan or fund is an individual retirement account and contributions are made in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the ~~judgment~~; **levy**; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the ~~judgment~~; **levy**.

(7) Money that is in a medical care savings account established

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under IC 6-8-11.

~~(c)~~ The total value of the property exempted under subsection (b)(1) through (b)(3) may not exceed ten thousand dollars (\$10,000).

(d) A bankruptcy proceeding that results in the ownership by the bankruptcy estate of a debtor's interest in property held in a tenancy by the entireties does not result in a severance of the tenancy by the entireties.

~~(d)~~ **(e)** Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:

(1) subject to this chapter; or

(2) exempt from levy or sale on execution or any other final process from a court.

SECTION 10. IC 34-55-10-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. (a) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing the amount for each exemption under section 2(c)(1) through 2(c)(3) of this chapter to take effect not earlier than January 1, 2010, and not later than March 1, 2010.**

(b) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing new amounts for each exemption under section 2(c)(1) through 2(c)(3) of this chapter every six (6) years after exemption amounts are established under subsection (a). The rule establishing new exemption amounts under this subsection must take effect not earlier than January 1 and not later than March 1 of the sixth calendar year immediately following the most recent adjustments to the exemption amounts.

(c) The department of financial institutions shall determine the amount of each exemption under subsections (a) and (b) based on changes in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most recent six (6) year period.

(d) The department of financial institutions shall round the amount of an exemption determined under subsections (a) and (b) to the nearest fifty dollars (\$50).

(e) A rule establishing amounts for exemptions under this section may not reduce an exemption amount below the exemption amount on July 1, 2005.

SECTION 11. IC 34-55-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3. The judgment debtor may designate real property, personal property, or both, as the**

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exempted property.

SECTION 12. IC 34-55-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. For the appraisal of any property to be exempted under this chapter, two (2) ~~disinterested householders of the neighborhood~~ **appraisers** shall be chosen, one (1) by the plaintiff or the plaintiff's agent or attorney, and one (1) by the ~~judgment~~ debtor. These two (2), in case of disagreement, shall select a third. If either party fails to select an appraiser, one (1) shall be selected by the officer holding the execution.

SECTION 13. IC 34-55-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The appraisers shall make a schedule of the real and personal property selected by the ~~judgment~~ debtor, describing the real estate by metes and bounds, and the personal property by separate items, affixing to each the value they agree upon. The appraisers, or a majority, shall affix to the schedule an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the property described in the schedule above is valued justly."

SECTION 14. IC 34-55-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. The schedule of real and personal property shall be delivered to the officer holding the execution or other process. The officer shall return the schedule with the execution or other process and make the schedule a part of the return. However, all second or subsequent appraisals under this chapter are at the cost of the party or parties asking for the reappraisal, unless the property of the ~~judgment~~ debtor at the time of the reappraisal is appraised at enough over and above the legal exemption to meet the costs.

SECTION 15. IC 34-55-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. If the ~~judgment~~ debtor claims as exempt from execution personal property only, the officer holding the execution shall cause the property to be appraised and set apart to the ~~judgment~~ debtor, and shall proceed to sell such other property, if any, that is subject to execution according to law.

SECTION 16. IC 34-55-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) ~~If the claim of the judgment debtor as exempt from execution includes both real and personal property, the officer holding the execution shall proceed to have the personal property appraised and set apart to the judgment debtor, and then have the real property claimed appraised. If the amount of both appraisals exceeds six hundred dollars (\$600), the debtor may, within sixty (60) days after the appraisals, pay the excess~~

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or an amount sufficient to satisfy the execution. However, if the debtor fails to do so, the officer shall proceed to sell the real property as other real property is sold on execution; if the execution authorizes the sale of the property. **If the value of a debtor's interest in property for which an exemption is claimed exceeds the amount of the exemption, the property may be sold. However, the debtor must be paid an amount equal to the debtor's exemption in the property from the proceeds of the sale.**

(b) In making the sale under subsection (a), the officer may not ~~receive~~ **accept** a bid unless the bid exceeds the difference between six hundred dollars (\$600) and the appraisal of the personal property set apart to the judgment debtor. If the officer sells the real property, the officer shall pay over to the judgment debtor the amount of the difference; and of the remainder, apply upon the execution enough to satisfy the execution; and pay the balance, if any, to the judgment debtor or to such other party entitled to the balance. **exempt value of the property. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, a bid may not be accepted if the bid is less than the sum of the amount of the indebtedness secured by the lien and the exempt value of the property.**

SECTION 17. IC 34-55-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. In all cases in which real property is claimed as exempt from sale on execution, if the real property is susceptible of division by metes and bounds without material injury, the real property shall be divided to exempt the principal dwelling house or homestead of the ~~judgment~~ debtor.

SECTION 18. IC 34-55-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. Before a ~~judgment~~ debtor receives the benefit of the exemption provided by this chapter, the ~~judgment~~ debtor shall deliver to the officer holding the execution a schedule of all the ~~judgment~~ debtor's property, as required by law, if an exemption from sale on execution is claimed.

SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 34-55-10-7; IC 34-55-10-10.

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